

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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|--|---|-----------------------------------|
| Ricky Dean Tate, a/k/a Rickey Dean Tate, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | Civil Action No. 9:09-0839-TLW-BM |
| |) | |
| Warden Michael McCall, <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

ORDER

This civil action was originally filed by the Plaintiff, Ricky Dean Tate (“Plaintiff”), proceeding *pro se*, pursuant to 42 U.S.C. § 1983 on April 2, 2009. (Doc. # 1). On August 20, 2009, Plaintiff filed a motion to voluntarily dismiss this case. (Doc. # 23). That motion was granted, and this case was dismissed by Order filed August 28, 2009. (Doc. # 28).

The matter now comes before this Court for review of the Report and Recommendation (“the Report”) filed by Magistrate Judge Bristow Marchant, to whom this case had previously been assigned. In the Report, the Magistrate Judge recommends that Plaintiff’s Motion for Emergency Relief and to Reopen Civil Action be denied. (Doc. # 34). Plaintiff filed an Objection to the Report, (Doc. # 36), to which Defendants replied. (Doc. # 40). In conducting its review, the Court therefore applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections...The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a *de novo* determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the Report and Recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the

Report thus depends on whether or not objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992)

(citations omitted).

In light of the standard set forth in Wallace, the Court has reviewed, de novo, the Report and the Objection. After careful review of the Report and objections thereto, the Court hereby **ACCEPTS** the Report. (Doc. # 34). The Plaintiff's Motion for Emergency Relief and to Reopen Civil Action is **DENIED**. (Doc. # 31).

IT IS SO ORDERED.

October 1, 2012
Florence, South Carolina

s/Terry L. Wooten
United States District Judge